

The politics of miscarriage

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In 2015, Purvi Patel became the first person in the US to be charged, convicted and sentenced for ‘feticide’ in relation to her own pregnancy. In 2013, she had been admitted to an emergency room in Indiana after turning up with heavy bleeding and a severed umbilical cord. She claimed to have suffered a miscarriage and disposed of the foetal body on the way to the hospital. The prosecution, however, argued she had deliberately sought to terminate the pregnancy through taking abortion-inducing drugs ordered online (though the toxicology report found no evidence of the drugs in her body). Patel was also charged with neglect of a dependent, as the prosecution proposed that the foetus had in fact been born alive, and could have survived if medical attention had been sought.¹ Though the charges appear contradictory (and the evidence for both was fiercely contested), the prosecution contended that a person can be guilty of ‘feticide’ for deliberately trying to end a pregnancy by illegal means, even if the foetus survives; and that in such cases, a person can also be guilty of letting them die after birth. Patel was indeed found guilty of both crimes – class A felony ‘neglect of a dependent’ and class B felony ‘feticide’ – and sentenced to 20 years in prison.

Indiana’s ‘feticide’ statute, introduced in 1979, refers to ‘a person who knowingly or intentionally terminates a human pregnancy with an intention other than to produce a live birth or to remove a dead foetus’, or to perform a legal abortion.² It was designed with violent third parties in mind whose actions cause a pregnancy to end in miscarriage or stillbirth (through intimate partner violence or assault for example), rather than those who attempt an illegal ‘self-abortion’. Indeed, the Indiana Court of Appeals vacated the ‘feticide’ charge against Patel

in 2016, stating that ‘the legislature did not intend for the feticide statute to apply to illegal abortions or to be used to prosecute women for their own abortions’.³ The Patel case, however, is by no means an isolated incident and stands testament to the increasing criminalisation of miscarriage in the US, as women – disproportionately poor and/or of colour – are considered suspect and punished for disguising illegal ‘self-abortion’ as involuntary miscarriage or stillbirth. Thirty-eight states have ‘feticide’ or ‘fetal homicide’ laws⁴ that may be applied in cases of ‘suspicious’ miscarriage/stillbirth, and women have also been held criminally liable for ‘reckless’ behaviour, like drug use, that is deemed to play a causal role in adverse pregnancy outcomes.⁵ Since 1973, at least 45 states in the US have sought to prosecute women for exposing their ‘unborn child’ to drugs under a variety of laws such as ‘child endangerment’ or ‘child neglect’. In Oklahoma, a drug-addicted woman, Theresa Lee Hernandez, was sentenced to 15 years in prison for second-degree murder after her baby was stillborn in 2004 and tested positive for methamphetamine.⁶ In February 2018, despite the clarification of the Indiana law, Kelli Leever-Driskel was arrested after a stillbirth and charged with ‘feticide’ and involuntary manslaughter based on her alleged drug use while pregnant, and remains in prison.⁷

Faced with these kinds of cases, the onus on the legal defence is to ‘prove it’s a miscarriage’⁸ or stillbirth, and moreover an ‘innocent’ one, thereby summoning a series of binary distinctions – chosen versus unchosen, intentional versus spontaneous, voluntary versus involuntary, reckless versus responsible, and so on – that could hold the key to an individual’s freedom from incarceration and other forms of punishment. But from a broader theoretical viewpoint, what

kind of response might these criminal cases generate? What have feminists had to say about miscarriage and its place within the politics of pregnancy, and how might this inform the challenge to its criminalisation in the US and beyond?

Before proceeding further, it is important to address some terminological issues, given that there is no clear agreement on what a 'miscarriage' or a 'stillbirth' actually is. For example, the UK National Health Service defines 'miscarriage' as 'the loss of a pregnancy during the first 23 weeks', and a stillbirth as 'when a baby is born dead after 24 completed weeks of pregnancy';⁹ but in the US, the point of distinction is usually 20 weeks.¹⁰ The terms themselves are also contested, especially 'miscarriage' with its connotations of failure (e.g. a 'miscarriage of justice'), or implication that the pregnant person is somehow responsible (e.g. the 'mis' as in 'misplaced'). In light of these issues, 'pregnancy loss' is often used as an alternative by academics and support groups – a wide-ranging term that can cover the cessation of a pregnancy whatever its duration, as well as instances where a pregnancy has been terminated but loss is felt, as in a 'therapeutic abortion' for medical reasons. However, this more experientially laden term is not always appropriate, given that loss may not be felt when a pregnancy ends; and as will be discussed, there are political reasons to be wary of the language of loss within a 'pro-life' saturated political climate in which a sense of loss is more or less demanded as the only intelligible and proper response.¹¹ Accordingly, this article opts for the more colloquial term 'miscarriage' to speak in general terms of non-induced pregnancy cessation, as the priority in this instance is to avoid emotional implications regarding the highly variable subjective experience of this phenomenon.¹²

The designation of those who are/have been pregnant also runs into terminological difficulties, as speaking of 'pregnant women' can be taken as exclusionary of pregnant men or those who are gender non-binary.¹³ More inclusive gender-neutral terms like 'pregnant people' are increasingly preferred,¹⁴ and impatience has been expressed in relation to feminist critics who persist in referring to 'pregnant women' as a generic collective, or 'the pregnant woman' as an abstract singular.¹⁵ Yet moving to gender-neutral

language is by no means a simple fix. In the first instance, as Laura Briggs points out, the language of 'pregnant people' and 'non-pregnant people' has a history of reactionary usage: for instance, by those who seek to deny protections against pregnancy discrimination in the workplace by insisting it is not a form of illegal sex discrimination.¹⁶ Moreover, the use of gender-neutral language can feel somewhat obfuscatory when pregnancy is hardly a gender-neutral affair. Just as the capacity for pregnancy has consistently been linked to femaleness and womanhood within the binary sex/gender model, normative and misogynist ideas about femaleness and womanhood – such as feminine self-sacrifice, the unruliness of female flesh, or the untrustworthiness of women's testimony and conduct – have in turn determined social expectations and regulations of pregnancy. Indeed, it is precisely this close association that makes male pregnancy such an 'unthinkable' phenomenon,¹⁷ whilst at the same time, we see gendered notions of feminised pregnancy carrying over into the paternalistic, patronising and dismissive ways that non-female pregnant people are also treated.¹⁸

So whilst de-naturalising the circular link between 'pregnancy' and 'women' is essential to the project of transforming dominant imaginaries of pregnancy and overturning the patriarchal, heteronormative, cisnormative government of reproduction, it does not necessarily make sense to speak of pregnancy in gender-neutral terms, or to abandon 'pregnant women' as an analytical category. This is especially true when the intention is to examine how struggles for control of pregnancy and reproduction impact particularly upon people understood to be women and girls, although, as Michael Toze argues, 'feminist critiques of the regulation of female bodies can be expanded to offer a mechanism for analysing the ways in which trans masculine bodies are also regulated'.¹⁹ With such considerations in mind, this article does use gendered terminology like 'pregnant women' when referring to gendered discourses and regimes of pregnancy that explicitly or implicitly evoke and impact upon pregnant women *qua* women. But when the use of gender-specific terminology is not vital to the point, more capacious terms like 'pregnant people' are used in a bid to expand the conceptual frame.

Miscarriage and feminist philosophy

For something that affects so many women so directly, and is such a deeply gendered phenomenon, it is perhaps surprising that miscarriage has received little feminist attention. The reproductive justice movement has forcefully challenged the singular focus on abortion, highlighting systematic sterilisation abuse amongst other coercive reproductive practices by the state, and the continuing power of 'the story that says poor women and women of colour should not give birth'.²⁰ Accordingly, it has become more widely understood amongst feminists that the right *to* reproduce is as much at stake as the right *not* to.²¹ But the place of non-intentional non-reproduction – or 'failed' reproduction – within a feminist politics of non/reproduction requires further theoretical elaboration. So often miscarriage is treated as a private or 'medical' problem, 'or worse "her fault"',²² such that its social and political aspects are obscured. Yet, for many feminists, attending to miscarriage can feel like risky business, when acknowledging that the range of feelings it can entail – including sadness, loss and grief – might seem to give credibility to anti-abortion crusades that fetishise foetal life and tragedise its ending. The claim that pro-choice feminism straightforwardly dismisses the foetus as a 'bunch of cells' is, as Ann Cahill argues, something of a caricature; yet the continued patriarchal appropriation of pregnancy and assault on women's reproductive lives renders 'any attempt at subtlety politically dangerous'.²³ Just as 'speaking as an aborting body ... from within abortion can feel impossible',²⁴ speaking from 'within miscarriage' can feel equally so.

That said, work is being done to address this theoretical lacuna. Alongside work on miscarriage and stillbirth within feminist sociology and anthropology,²⁵ there has been a burgeoning interest within feminist philosophy in the last few years. A special issue of the *Journal of Social Philosophy* in 2015, for example, was devoted to 'Miscarriage, Reproductive Loss, and Fetal Death'.²⁶ The articles in this issue concentrate predominantly upon the ontological, ethical and social questions provoked by miscarriage and foetal death, rather than political or legal questions as such. The

opening essay by Alison Reiheld, however, does venture into this territory with her argument that miscarriage has been 'enrolled' in political debates and laws around abortion and control over pregnancy due to its 'sequestered' nature and 'liminal' status.²⁷ As a state of being 'betwixt and between', she contends, miscarriage falls between a series of binaries including 'parent' and 'not-parent', 'not-having-procreated' and 'having procreated', 'life and death', 'abortion and pregnancy'. Its ambiguous ontological and social status, according to Reiheld, means that miscarriage is not often acknowledged or spoken of, which in turn makes it susceptible to being co-opted by discussions and legal battles over the control of pregnancy and abortion: 'A thing poorly understood but too-like states or events which we believe we understand is quite likely to be drawn into debates over those other states or events'.²⁸ Accordingly, she contends, miscarriage becomes subjected to sets of laws and policies (proposed or enacted) seeking to control abortion and pregnancy: those which require pregnant people to prove their pregnancy has ended involuntarily rather than voluntarily; those which allow health care providers to opt out of treating miscarriage because it can require similar techniques as abortion (most notably D&C),²⁹ and those which hold individuals criminally responsible for their own miscarriages or stillbirths where their actions or behaviours are deemed to have played a causal role.³⁰

Reiheld's conclusion is that if miscarriage were better theorised and understood as a 'liminal event', it might not be so 'easily enrolled in these other debates' pertaining to control over pregnancy and abortion. She acknowledges that in light of the persistent obsession with 'fetal personhood' in the US, it is unlikely that we can 'avoid entirely' this kind of enrolment. Nonetheless, the task for philosophers, as well as law- and policy-makers, as Reiheld sees it, is to develop an understanding of miscarriage 'in its own right' as a liminal event that is 'clearly distinct' from the binaries it falls in between. 'Without a clear notion of what miscarriage is', she asserts, 'I fear we will repeat again and again the negative ethical fallout of failure to understand miscarriage's liminality. The result? Women who miscarry will again and again be isolated, their troubles sequestered, their experiences

and fates enrolled in debates which hardly bear on miscarriage at all.³¹

The call to treat miscarriage as a case apart does make practical sense in certain situations. For example, people experiencing miscarriages or stillbirths often find it distressing to be treated in the same spaces within medical institutions as those having check-ups for ongoing pregnancies or those in labour. But at the level of principle, the argument to separate out miscarriage from pregnancy and abortion needs to be further questioned. What makes miscarriage 'clearly distinct' from pregnancy and abortion, as Reiheld contends? In what sense can debates around the control of pregnancy and abortion be considered as 'hardly bearing' on miscarriage? Or, if indeed it is 'too like' abortion, does this imply we should be devoting our theoretical energy to trying to separate them out?

Miscarriage/pregnancy

The first point to take issue with is the idea that 'miscarriage' needs to be differentiated from 'pregnancy'. Is a pregnancy that ends in miscarriage not still a pregnancy? On what grounds can they be rendered distinct? One distinction drawn by Reiheld is that whilst miscarriage is 'liminal' in the sense of being socially marginalised or 'taboo', pregnancy is surrounded by a whole host of well-established, 'clear cultural scripts', and is therefore 'not liminal'.³² But debates around the meaning of 'liminality' aside,³³ this claim obscures the fact that social support for pregnancy is highly conditional and variable, depending upon who is pregnant. It is certainly true that the lived experience of pregnancy tends to be a 'noisy one',³⁴ whilst the ending of a pregnancy through miscarriage is characterised more often by silence. Yet as feminist theory has long demonstrated, well-established cultural scripts do not necessarily have positive effects, nor do they impact upon different individuals and social groups in the same way.

The dominant scripts of pregnancy in the US overwhelmingly privilege a certain kind of white, well-off, straight, non-disabled, compliant, feminine pregnant subject. For those who measure up, pregnancy generates significant levels of social approval and support:

'Pregnancy is bathed in sunlight, moonlight, God light. What could be more beautiful than the pregnant woman, deliverer of pure promise?'³⁵ But pregnancy can also be the source of 'acute social shaming', as those who do not match this vision of pregnant femininity are consistently designated irresponsible and suspicious.³⁶ The figure of the pregnant teen, for example, is a ubiquitous symbol of problematic pregnancy, along with pregnant bodies of all ages marked by nonwhiteness, or a whiteness 'contaminated by poverty'.³⁷ The 'clear cultural scripts' of pregnancy thereby perpetuate a toxic pregnancy hierarchy that is absolutely central to the politics of miscarriage when, in a study of 413 arrests and forced interventions on pregnant women in the US between 1973 and 2005, 71% were living in poverty and 59% were women of colour.³⁸ In the past decade, arrests and forced interventions have 'skyrocketed' according to the National Advocates for Pregnant Women: at least 700 more cases have been reported, and those targeted continue to be 'overwhelmingly low income and a disproportionate number are women of colour'.³⁹

It may seem contradictory that the same people whose pregnancies are marked as deviant and threatening to social/national futures are punished when their pregnancies are deemed to be in jeopardy or end without a live birth; but this apparent contradiction only lays bare how the professed concern for 'the child' functions as a smokescreen or 'cover story'⁴⁰ for wider political agendas and exercises of power. Scenes of criminalised pregnancy depicted in the news – like the disturbing images of Purvi Patel in handcuffs – may also seem a far cry from the frothy magazine articles and casual social interactions Reiheld has in mind when she speaks of 'pregnancy scripts'. But such banal discourses are a primary vehicle of what Jennifer Scuro refers to as 'childbearing ideology': the 'scripts and rituals that underwrite socio-political, gendered, and embodied expectations about pregnancy', differentiating the 'right' kind of pregnancy from the 'wrong' kind, and validating only its productive aspects.⁴¹ Childbearing teleology promotes a normative model of pregnancy as 'all directed for the sake of a child produced', and is instilled through a 'medical and cultural complex of guidance and instruction'. Pregnancy guidebooks, for instance, align



the time of pregnancy to the expected linear development of the foetus, with routine temporal milestones – the successive weeks, months, or trimesters – serving as a ‘countdown’ to birth.⁴² Indeed, the more proleptic versions of these narratives present the imagined baby or child as *already here*, and the pregnant person as ‘already a mother embarked on a life trajectory of mothering’.⁴³ As feminist writer Angela Garbes recounts:

When I first opened *The Healthy Pregnancy Book* ... I was startled by an image ... There on the second page was a gray, delicately shaded pencil illustration of a baby nestled cosily in a womb, its arms and legs crossed. A thought bubble emanated from the baby, carrying a firm message: ‘Mama take good care of yourself so I can grow better’. I was only eight weeks pregnant (my foetus was kidney-bean size ...), and yet here was this fully formed baby admonishing me for mistakes I was already making. ‘Do you really want to eat that?’ the baby asked incredulously on page 54.⁴⁴

To be sure, many pregnant people do think of themselves as mothers or parents to their foetuses, and of their foetuses as their babies or children, and engage in material and social practices that ‘inter-

pellate’ them as such.⁴⁵ But as feminists have been arguing for decades now, the externally imposed logic that treats the foetus as a separate, autonomous being with interests, even ‘rights’ of its own, comes with serious consequences for pregnant people, especially when combined with ideologies of ‘total motherhood’. The pregnant person, as Lauren Berlant contends, is expected to ‘act like a mother’ to the foetus, but at the same time, is effectively made a ‘child to the foetus’ through the de-legitimation of their agency and identity, as they become ‘more minor and less politically represented than the foetus, which is in turn more privileged in law, paternity, and other less institutional family strategies of contemporary American culture’.⁴⁶ Another, less considered, consequence of childbearing teleology is that ‘miscarried’ pregnancies which do not result in a live birth are cast outside the world of normative pregnancy altogether, and shrouded in shame, stigma, silence or suspicion. If pregnancy is taken as equivalent to ‘having a baby’, then as Scuro writes, ‘anything short of these expectations of equivalence becomes a site of harm and humiliation’,⁴⁷ even evidence of ‘child abuse’ or criminal ‘neglect’.

Defining miscarriage as a liminal event *in distinction* to pregnancy therefore seems to somewhat miss the point, as if the ubiquitous scripts and symbols of normative pregnancy were not themselves the source of the problem. 'There are no greeting cards' for pregnancy loss, writes feminist anthropologist Linda Layne,⁴⁸ but surely this is not a reason for lament? I am being somewhat facetious here, as the point of the statement is to draw attention to the general lack of social support for people who go through miscarriage – all the more jarring if it has been abundant during the pregnancy and is then suddenly withdrawn when the pregnancy ends unexpectedly with 'nothing to show for itself'.⁴⁹ But the problem, arguably, can be more squarely located in the dominant imagery and logic manifest in pregnancy greeting cards themselves, rather than the lack of an equivalent miscarriage range. It is precisely the depictions of pregnancy featured in greeting cards – where 'being pregnant' means 'having a baby' and 'holding the future' – that make miscarriage appear as a deviation from pregnancy's proper path. And however banal or seemingly benign, the imagery and 'noise' around pregnancy too often perpetuates the patriarchal convention of appropriating the 'unborn child' from the lived pregnant body, such that it apparently makes sense to proceed as if the gestating foetus might require 'protection' from the body that sustains it and with which it is intertwined. Indeed, the more banal and seemingly benign this symbolism is, the more ordinary and commonplace it becomes.

Miscarriage/abortion

The second point to address is the idea that miscarriage should be properly distinguished from abortion, to ensure that those who go through miscarriage are shielded as much as possible from the negative 'fall-out' from the 'abortion debate'. Both miscarriage and abortion have an abject status in a social context in which pregnancy is equated with childbearing and proleptic parenthood. Neither delivers up the 'the all-miraculous, all-coveted BABY'.⁵⁰ Yet they are often treated as oppositional phenomena, which stems from the centrality of 'choice' to the construction of abortion as a political issue. If abortion is

framed as, above all, the chosen volitional act of an autonomous individual, then miscarriage becomes defined by its lack of chosenness and intentionality. Ann Cahill thus identifies a widespread assumption that 'whether a pregnancy is terminated voluntarily or not constitutes an enormous distinction between experiences',⁵¹ which is presumably behind Reiheld's claim that 'the line between completing or accelerating a miscarriage and performing an induced abortion seems clear to me'.⁵² But for as long as the rhetoric of individual choice and voluntarism has been attached to abortion, it has also been subject to feminist interrogation,⁵³ which gives us reason to hold this assumption up to closer inspection. This is not to say that chosenness and unchosenness are not significant or relevant to the discussion. In plenty of cases, abortion is experienced as an empowering exercise of choice, whilst many personal accounts of miscarriage describe it as an event that brings a depleted sense of control and agency. Jennifer Doyle, for example, writes of her sense that 'the abortion I had as a student at Rutgers in the 1980s was one of the most singularly empowering experiences I've had as a sexual subject',⁵⁴ whilst Angela Garbes describes feeling 'powerless' as her miscarriage occurred.⁵⁵ But the line between miscarriage and abortion can also feel much finer, as Scuro documents in her account of a 'therapeutic abortion' on medical grounds, which for years she had classified as a miscarriage, feeling it did not 'count' as an abortion because the pregnancy had been wanted.⁵⁶ Or as Barbara Katz Rothman argued in *The Tentative Pregnancy* over thirty years ago: 'The decision to abort a foetus with spina bifida when you live in a fourth-floor walkup in a city designed without access for wheelchairs is not really an exercise in free choice'.⁵⁷

There is clearly a danger in highlighting these kinds of fine lines. In the first instance, the examples taken above from Scuro and Katz Rothman can easily be made to fit the normative narrative of the 'right' kind of abortion: the regretful one involving a moral dilemma, or a difficult and painful choice in response to extraneous circumstances.⁵⁸ This narrative belongs to what Erica Millar calls the 'mushy middle' that is 'at once pro-choice and anti-abortion', professing support for women to choose and have abortions,

‘so long as they feel “really, really bad” about them’.⁵⁹ Narratives of abortion as a ‘choiceless choice’⁶⁰ can also be summoned in support of the ‘pro-life’ claim that women are ‘victims’ of abortion as much as the ‘unborn’, as no woman in their right mind or in the right circumstances would ever choose abortion. As Millar demonstrates, since the early 1980s, the transnational anti-abortion movement has ‘increasingly shifted rhetorical focus away from protecting foetal life to feigning equal concern with the impact of abortion on women’.⁶¹ This turns on reframing abortion as ‘loss’ rather than ‘murder’, and transposing the foetus into ‘a constant, absent presence in the woman’s life, constantly judging her for making the wrong decision and retrospectively organising her pregnancy as involving an eternal relationship between a mother and her child.’⁶² The ‘wrongness’ of the abortion choice is recast as a wrong against women themselves and their ‘maternal nature’, such that women need to be protected from the bad choices they might make under the spell of feminist doctrine. Choice is thereby voided through claims that abortion could never be a valid choice, and, further, that it is a ‘loss even when it is chosen’.⁶³

So if the distinction between miscarriage and abortion hinges upon individual choice, voluntarism and intention, then in practice it is being eroded quite effectively by anti-abortion campaigners, through the language of loss and mobilisation of what Millar calls ‘foetocentric grief’. At the same time, the presumption of miscarriage as a passive event that is *undergone* rather than chosen is being eroded through the regulatory discourses of ‘foetal motherhood’⁶⁴ that not only maternalise abortion but responsabilise all pregnant people for the outcomes of their pregnancies. As Pam Lowe argues, ‘every choice that a woman makes, from eating to prenatal testing, is taken as evidence of her willingness to perform idealised motherhood ... whilst nominally “choices” can be made, there is often only one “right” choice for responsible women to make’.⁶⁵ Hence, whilst it may be recognised that miscarriage itself is not actively chosen or intended, the pregnant person can nevertheless be held responsible for their ‘choices’ up to that point. This logic reaches its dreadful realisation through the criminal justice system when women are arrested, prosecuted

and charged for ‘culpable miscarriage’, the message being that it does not matter whether the ending of a pregnancy was chosen, intended or undertaken deliberately, because a pregnant individual can still be held responsible for failing to ‘act like a mother’. This is clearly recognised by Dennis Muñoz, a lawyer representing two imprisoned women in El Salvador (where there is a total ban on abortion), who contends that the miscarriage/abortion distinction has become essentially irrelevant in the eyes of police and prosecutors: ‘They say women are responsible for care of the foetus ... There is a lot of ignorance and no intention to investigate. There’s also religious dogma. I prove it’s a miscarriage but the courts don’t care.’⁶⁶

All this might well suggest that the feminist response to the ‘merging’ of miscarriage and abortion⁶⁷ should be to do just the opposite and reinforce the distinction between the two. But if such a distinction depends upon a reinforcement of chosenness/unchosenness as the decisive criterion, or presumptions about which pregnancies are ‘willed’ and ‘wanted’ and which are not, this only brings us back to all the problems that ensue when individual choice, action and emotion are placed front and centre of reproductive politics. The marshalling of individual autonomy – ‘My body, My choice’ – certainly carries a powerful charge as an act of reclaiming what patriarchal ideologies and laws seek to obliterate; and meaningful choice is an important condition of reproductive freedom. But as reproductive justice activists have tirelessly argued, in isolation from campaigns for ‘enabling conditions’,⁶⁸ the mantra of individual choice only serves to eclipse the gross structural inequalities that materialise through differential access to reproductive services including abortion, as well as through modes of reproductive coercion, censure and sanction. In practice, the apparatus of ‘choice’ works for some but against others, when the moralised and gendered responsibility to make the ‘right’ choices and want the ‘right’ things functions as a form of disciplinary power exercised particularly over the ‘wrong’ sort of women.⁶⁹ Further, as Millar points out, the tables are easily turned when ‘choice’ is appropriated and marshalled by anti-abortion activists. Whilst on the one hand they claim that women’s choices to abort are against their ‘maternal nature’ and hence

can never be genuine, they themselves deploy the discourse of choice when they assert that knowledge of ‘post-abortion syndrome’, as well as incremental restrictions on abortion, including mandatory counselling and ‘cooling-off’ periods, ‘provide women with informed and “real” choices’.⁷⁰

What we are dealing with, then, is a terrain in which ‘chosen’ and ‘unchosen’ may continue to hold subjective meaning (in terms of how an individual might understand and frame their own abortion or miscarriage), but their political meaning has become subsumed by powerful discourses of proper and responsible behaviour, and a consequentialist logic whereby outcome, above all, is deemed sufficient grounds for culpability. In response, what is required is not so much a renewed feminist defence of individual choice, but joined-up resistance to the mechanisms of responsibilisation that put people who experience both abortion *and* miscarriage at risk of censure and criminal punishment. This means suspending questions about choice and intent, and reckoning instead with the gendered, raced and classed norms that position certain individuals on the right side of social approval and the law whilst rendering others reckless or suspicious.⁷¹ *Whose* miscarriage looks ‘too like’ abortion? If there is a ‘right’ and a ‘wrong’ kind of abortion, how does this relate to the ‘right’ and ‘wrong’ kind of miscarriage, and the ‘right’ and ‘wrong’ kind of pregnancy? How well is someone able to narrate their miscarriage or abortion to meet the requirements for ‘responsible decision-making’, ‘conscientious pregnancy’ or ‘innocent loss’?

It also means treating miscarriage and abortion as issues of social justice, and reckoning with the impacts, implications and costs of abortion and miscarriage – quite literally for those without adequate medical insurance or who are gestating for money⁷² – in light of how they map on to wider social inequalities. For instance, not only have impoverished and non-white women in the US been disproportionately affected by state-imposed restrictions on accessing abortion, by the denial of federal funds for abortion, by punitive welfare policies, and by the criminalisation of pregnancy, abortion and miscarriage; statistics also show that those same groups are more likely to experience miscarriage in the first place due to

factors including inadequate or non-existent health-care, housing conditions, and the ‘weathering effect’ of systemic racism.⁷³ When we widen the focus out like this, what appears most significant with regard to cases like Purvi Patel’s is not so much what the individual in question may have chosen or intended – was it deliberate? – but the conditions that make adverse pregnancy outcomes, interventions and arrests far more likely for some than for others; in which pregnant people may refrain from seeking help for drug or alcohol addiction for fear of being reported to the police; and in which the options for some pregnant people are so severely constrained that risking a ‘DIY abortion’ may appear as the only option.⁷⁴

Conclusion: spectrum not separation

It is problematic to distinguish miscarriage from pregnancy on the presumption that miscarriage is socially marginalised whilst ‘pregnancy’ is socially supported; or on the grounds that ‘pregnancy’ is child-producing whilst miscarriage is not. It is also problematic to treat miscarriage and abortion as categorically separate on the grounds of choice, volition or intention. Not only do such distinctions frequently falter on further examination; they are also integral to oppressive social discourses of childbearing teleology and foetal motherhood which, to quote Berlant, ‘retraumatise a set of already vulnerable bodies: the body of the woman unsettled by pregnancy and already exposed to misogyny and the state; the impoverished, the young, the often African American or Native American women who have had little access to reproductive health support apart from a scandalous history of state chicanery ...’⁷⁵ From this perspective, it is not that miscarriage is wrongly ‘enrolled’ in laws and debates over the control of pregnancy and abortion due to conceptual error. It is rather that struggles over the criminalisation of miscarriage are *inextricable* from struggles over the control of pregnancy and abortion. When pregnant people are treated as dangerous subjects, it is inevitable that those who have experienced miscarriage or stillbirth will be ‘swept up’ into the criminal justice system, at least those whose reproductivity and existence have already been marked as a threat.

Accordingly, instead of trying to refine categorical

distinctions and treating miscarriage as a case apart, there is much more to gain from pursuing a politics of solidarity and considering different pregnant realities and outcomes together, and in relation to one another. A powerful example of this kind of approach is provided by the 'full spectrum' doula movement: a rising form of reproductive justice activism that seeks to provide non-judgmental support and care for pregnant people however their pregnancy proceeds or ends, whether in birth, abortion, miscarriage or stillbirth.⁷⁶ As Loretta Ross explains it, the intention is to 'weave diverse pregnancy experiences into a holistic service and advocacy model that challenges stigmatised, artificial divisions among pregnancy outcomes'.⁷⁷ For instance, abortion advocacy and birth advocacy are forms of activism that usually operate separately, or indeed are presumed to be in conflict; but full-spectrum doulas have promoted the idea that 'abortion should not stand alone', and instead be approached as 'one part of a person's entire reproductive life. The same individual may have an abortion, give birth, and then have a miscarriage', and support and care should be equally available in every case.⁷⁸

The full-spectrum doulas provide a direct caregiving service that works with individuals, but in breaking down boundaries between birth, abortion, miscarriage and stillbirth, the movement also paves the way for pregnant/postpartum solidarity and co-ordinated struggle at a broader level. Though the 'abortion issue' operates as a pernicious mechanism of division, the full-spectrum approach enables us to see the damaging effects of 'pro-life' policies and logics upon all pregnant people and not only those who seek to terminate, as the logic of 'foetal rights' renders pregnant bodies increasingly vulnerable to unwanted interventions and procedures. Lynn Paltrow, for example, of the National Advocates for Pregnant Women, tells of an anti-abortion campaigner who found herself subjected to a forced C-section.⁷⁹ The full-spectrum approach can also mobilise collective resistance to the normative 'success model' of pregnancy as a 'trap' or 'set-up' that generates feelings of guilt and shame even amongst those who do deliver up the expected child.⁸⁰ To be sure, it is not uncommon for those who have been through a miscarriage or stillbirth to report feelings of resentment

towards those whose pregnancies continue to term, as well as those who opt to abort. These are understandable emotional responses – especially within a culture that pits women against one another – and should not be weaponised as yet another source of gendered guilt. But at the same time, recognition of 'common threats and threads', in Paltrow's words, can serve as a uniting force to challenge the master narrative of productive pregnancy and sacrificial maternity. Scuro also proposes this kind of vision, writing that 'Perhaps instead solidarity will be found with the woman who has miscarried, as she might recognise herself in the woman who has aborted her pregnancy, and again each with the woman who has "successfully" given birth.'⁸¹

For feminist philosophy, then, the aim should be to explore what philosophical analysis can bring to the 'full-spectrum' framework, whilst also taking on the foetocentric logics and value systems that divide us and do such damage. The impulse to 'rescue' miscarriage from the 'fallout' of abortion politics through insisting upon its difference may be strong, but in 'turn[ing] away less from those who have experienced miscarriage',⁸² it is vital not to turn away more from those who have experienced abortion. In particular, there is a need for vigilance concerning the assumptions and implications that lie behind the idea that it is *especially* bad for someone to be punished for inducing an abortion when in fact the cessation of pregnancy was involuntary. Of course there is a particular cruelty to being punished for something one did not do. This adds the injustice of wrongful accusation into the mix, and if the pregnant person did not want the pregnancy to end, a wretched kind of irony. But who is to say it is necessarily less painful to be punished for something that one has actually done, especially within a cultural climate that is so anti-abortion that even pro-choice activists refer to it as a 'necessary evil'?⁸³ And if we entertain, even for a second, the idea that abortion is something to distance ourselves from, or that punishing miscarriage is necessarily 'worse' than punishing abortion, we risk fuelling anti-abortion sentiment even further. Whether or not the 'crime' was committed, the focus should be squarely on challenging the brutality and injustice of the punishment full stop.

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Notes

1. The pathologist who testified for the defence told the court the foetus was at 23 or 24 weeks gestation and that its lungs were not developed enough to breathe. But the pathologist for the prosecution claimed that the foetus was further along than that – at 25 to 30 weeks gestation, which is treated as past the point of ‘viability’ – and was born alive. He also used the discredited ‘lung float test’ in making his determination. The idea behind the test (which dates from the seventeenth century) is that if the lungs float in water, the baby took at least one breath, but if they sink, then the foetus died before leaving the uterus. For more details, see Emily Bazelon, ‘Purvi Patel Could Be Just the Beginning’, *New York Times*, 1 April 2015, <https://www.nytimes.com/2015/04/01/magazine/purvi-patel-could-be-just-the-beginning.html>.
2. See <http://www.in.gov/legislative/bills/2009/SE/SE0236.1.html>
3. As for the neglect conviction, it was decided that ‘the State presented sufficient evidence for a jury to find that Patel was subjectively aware that the baby was born alive and that she knowingly endangered the baby by failing to provide medical care, but that the State failed to prove beyond a reasonable doubt that the baby would not have died but for Patel’s failure to provide medical care. Therefore, we vacate Patel’s class A felony conviction and remand to the trial court with instructions to enter judgment of conviction for class D felony neglect of a dependent and resentencing her accordingly’. See the Court of Appeals of Indiana case summary, *Purvi Patel v. State of Indiana*, 22 July 2016, <https://www.in.gov/judiciary/opinions/pdf/07221601tac.pdf>.
4. The National Conference of State Legislatures website claims that ‘at least 38 states have fetal homicide laws’. See ‘State Laws on Fetal Homicide and Penalty-Enhancement For Crimes Against Pregnant Women’, National Conference of State Legislatures, 1 May 2018, <http://www.ncsl.org/research/health/fetal-homicide-state-laws.aspx>
5. The National Advocates for Pregnant Women contend that media reporting on the impact of drug ingestion upon foetal development is consistently misrepresentative. See ‘Pregnancy and Drug Use: The Facts’, accessed 30 October 2018, http://advocatesforpregnantwomen.org/issues/pregnancy_and_drug_use_the_facts/.
6. Leticia Miranda, Vince Dixon and Cecilia Reyes, ‘How States Handle Drug Use During Pregnancy’, *ProPublica*, 30 September 2015, <https://projects.propublica.org/graphics/maternity-drug-policies-by-state>.
7. ‘NAPW Demands Indiana Prosecutor Drop Murder Charge Against Woman Who Had a Stillbirth at Home’, National Advocates for Pregnant Women blog, 2 August 2018, <http://advocatesforpregnantwomen.org/blog/2018/08/>.

8. These are the words of lawyer Dennis Muñoz, who represents two imprisoned women in El Salvador where there is a total ban on abortion. Between 2000 and 2011, more than 200 women were reported to the police for suspected abortions, 49 of whom were convicted with seven more convicted since 2012. See Jonathan Watts, ‘El Salvador: Where Women Are Thrown Into Jail For Losing a Baby’, *The Guardian*, 17 December 2015, <https://www.theguardian.com/global-development/2015/dec/17/el-salvador-anti-abortion-law-premature-birth-miscarriage-attempted-murder>.
9. ‘Miscarriage’, last modified 1 June 2018, <https://www.nhs.uk/conditions/miscarriage/>.
10. This is arguably attributable to the greater traction of the ‘foetal personhood’ trope within the wider socio-political context of the US.
11. See Erica Millar, ‘Mourned Choices and Grievable Lives: The Anti-Abortion Movement’s Influence in Defining the Abortion Experience in Australia Since the 1960s’, *Gender & History* 28: 2 (2016), 503.
12. For further clarification: the article tends to refer to ‘miscarriage’ rather than ‘miscarriage/stillbirth’ for ease of reading, but the argument pertains to the cessation of pregnancy at whatever stage.
13. The treatment of trans pregnancy in the media has been sensationalised and hysterical, but there are a growing number of academic articles available. See, for example, Paisley Currah, ‘Expecting Bodies: The Pregnant Man and Transgender Exclusion from the Employment Non-Discrimination Act’, *Women’s Studies Quarterly* 36:3 (2008), 330–336; Damien W. Riggs, ‘Transgender Men’s Self-Representations Of Bearing Children Post-Transition’, in *Chasing Rainbows: Exploring Gender Fluid Parenting Practices*, ed. Fiona Joy Green and May Friedman (Ontario: Demeter Press, 2013), 62–71; Michael Toze, ‘The Risky Womb and the Unthinkability of the Pregnant Man: Addressing Trans Masculine Hysterectomy’, *Feminism & Psychology* 28:2 (2018), 194–211. The University of Leeds has received funding from the UK Economic and Social Research Council for a three-year project on ‘An International Exploration of Transmasculine Practices of Reproduction’. See <https://transpregnancy.leeds.ac.uk/>
14. In 2016, the British Medical Association produced a document, ‘A Guide to Effective Communication: Inclusive Language in the Workplace’, which states that ‘A large majority of people that have been pregnant or have given birth identify as women. We can include intersex men and transmen who may get pregnant by saying ‘pregnant people’ instead of ‘expectant mothers’, accessed 30 October 2018, <https://archive.org/details/2016BritishMedicalAssociation-BMAGuideToEffectiveCommunication2016/page/n0>. This predictably caused a media outcry, with Stephen Adams and Sanchez Manning from the *Daily Mail* reporting the story with the headline ‘Doctors banned from using word “mothers”’, 28 January 2017, <https://www.dailymail.co.uk/news/article-4167632/Don-t-call-pregnant-patients-mothers.html>. The *Telegraph* quoted the Conservative MP Philip Dav-

- ies: 'If you can't call a pregnant woman an expectant mother, then what is the world coming to?' See Laura Donnelly, 'Don't call pregnant women "expectant mothers" as it might offend transgender people, BMA says', 29 January 2017, <https://www.telegraph.co.uk/news/2017/01/29/dont-call-pregnant-women-expectant-mothers-might-offend-transgender/>
15. See, for example, Sophie Lewis, 'Gestators of all Genders Unite!', Verso blog, 6 March 2018, <https://www.versobooks.com/blogs/3654-gestators-of-all-genders-unite>.
16. Laura Briggs, *How All Politics Became Reproductive Politics: From Welfare Reform to Foreclosure to Trump* (Oakland: University of California Press, 2017), 5.
17. Toze 'The Risky Womb and the Unthinkability of the Pregnant Man', 204–05.
18. For instance, the high-profile pregnancy of Thomas Beatie in the US in 2008 was the subject of much public 'concern' that his foetus might be negatively affected by previous testosterone use – he was instructed by an obstetrician via a television network (ABC TV) that it was 'really important' that he did not take any testosterone during the pregnancy – and that the future child would be 'confused' later in life about their parental situation. See Patrick Barkham, 'Being a pregnant man? It's incredible', *The Guardian*, 28 March 2008, <https://www.theguardian.com/lifeandstyle/2008/mar/28/familyandrelationships.healthandwellbeing>.
19. Toze, 'The Risky Womb', 204–05.
20. Alexis Pauline Gumbs, 'M/other ourselves: a Black queer feminist genealogy for radical mothering', in *Revolutionary Mothering: Love on the Front Lines*, eds. China Materns Gumbs and Mai'a Williams (Toronto: PM Press, 2016), 19.
21. Loretta Ross and Rickie Solinger, *Reproductive Justice: An Introduction* (Oakland: University of California Press, 2017).
22. Jennifer Scuro, *The Pregnancy [does-not-equal] Childbearing Project: A Phenomenology of Miscarriage* (London: Rowman & Littlefield, 2016), xiii.
23. Ann Cahill 'Miscarriage and Intercorporeality', *Journal of Social Philosophy* 46:1 (2015), 48.
24. Jennifer Doyle, 'Blind Spots and Failed Performance: Abortion, Feminism, and Queer Theory', *Critical Humanities and Social Sciences* 18:1 (2009), 25.
25. Best known amongst sociologists and anthropologists who have written on the subject of miscarriage and 'reproductive loss' are Gayle Letherby and Linda Layne. See, for example, Letherby's article 'The Meanings of Miscarriage', *Women's Studies International Forum* 16: 2 (1993), 165–180; and Layne's *Motherhood Lost: A Feminist Account of Pregnancy Loss in America* (Abingdon and New York: Routledge, 2002). See also Carol Komaromy and Sarah Earle (eds.), *Understanding Reproductive Loss: Perspectives on Life, Death and Fertility* (Abingdon and New York: Routledge, 2012). Miscarriage and stillbirth are also discussed in reproductive justice and advocacy publications such as Julia Chinyere Oparah et al, *Battling Over Birth: Black Women and the Maternal Healthcare Crisis* (Amarillo, TX: Praeclarus Press 2018).
26. See also Scuro, *Pregnancy [does-not-equal] Childbearing*; or Kate Parsons, 'Feminist Reflections on Miscarriage, in Light of Abortion', *International Journal of Feminist Approaches to Bioethics* 3:1 (2010), 1–22.
27. Alison Reiheld, "'The Event That Was Nothing": Miscarriage as a Liminal Event', *Journal of Social Philosophy* 46:1 (2015), 16.
28. Ibid., 23.
29. D&C, or Dilation and Cutterage, is the procedure of widening the cervix and surgically removing part of the lining and/or contents of the uterus.
30. Reiheld, "'The Event That Was Nothing"', 23.
31. Ibid., 23, 22.
32. Ibid., 13.
33. 'Liminality' was coined by anthropologist Arnold van Gennep in his 1909 text *Rites of Passage* and popularised by Victor Turner, both of whom use the term to refer to the transitional stage of a ritual initiation in which the 'liminar' is 'betwixt and between' fixed points in the social structure. But there are also ways of understanding liminality that are not wedded to the sequential linear structure of pre-liminal—liminal—post-liminal, where the 'liminal' names that which is excluded but remains on the margins as a perpetual threat to the stability and unity of the established symbolic or social order. The work of Julia Kristeva and Homi Bhabha can serve as illustrations here. I discuss the concept of liminality in more detail in relation to pregnancy and miscarriage in my forthcoming book *Pregnancy without Birth*.
34. Cahill, 'Miscarriage and Intercorporeality', 45.
35. Claudia Dey, 'Mothers as Makers of Death' *The Paris Review*, 14 August 2018, <https://www.theparisreview.org/blog/2018/08/14/mothers-as-makers-of-death/>.
36. Erica Millar, *Happy Abortions: Our Bodies in the Era of Choice* (London: Zed Books, 2017), 212.
37. Imogen Tyler, 'Chav Mum, Chav Scum: Class Disgust in Contemporary Britain', *Feminist Media Studies* 8:2 (2008), 30.
38. Lynn M. Paltrow and Jeanne Flavin, 'Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health', *Journal of Health Politics, Policy and Law* 38:2 (2013), 299–343.
39. Lynn Paltrow, 'The dangerous state laws that are punishing pregnant people', Think Progress, 28 September 2016, accessed 30 October 2018, <https://thinkprogress.org/criminalization-pregnancy-us-43e4741bb514/>.
40. Briggs, *Reproductive Politics*, 71.
41. Scuro, *Pregnancy [does-not-equal] Childbearing*, 189.
42. Ibid., 234.
43. Lauren Berlant, 'America, "Fat", the Fetus', *boundary 2* 21:3 (1994), 148.
44. Angela Garbes, *Like a Mother: A Feminist Journey Through the Science and Culture of Pregnancy* (New York: Harper-Collins, 2017), 19.
45. Catherine Mills, 'Technology, Embodiment and Abortion', *Internal Medicine Journal* 35:7 (2005), 428.
46. Berlant, 'America, "Fat", the Fetus', 147.
47. Scuro, *Pregnancy [does-not-equal] Childbearing*, ix.
48. Layne, *Motherhood Lost*, 69.
49. Scuro, *Pregnancy [does-not-equal] Childbearing*, 209.

50. Maggie Nelson, *The Argonauts*, (Minneapolis: Graywolf Press, 2015), 109.
51. Cahill, 'Miscarriage and Intercorporeality', 57.
52. Reiheld, "'The Event That Was Nothing'", 23.
53. Millar, *Happy Abortions*, 29.
54. Jennifer Doyle, 'Blind Spots and Failed Performance', 26.
55. Garbes, *Like a Mother*, 76.
56. Scuro, *Pregnancy [does-not-equal] Childbearing*, x.
57. Barbara Katz Rothman, *The Tentative Pregnancy: How Amniocentesis Changes the Experience of Motherhood* (New York: W. W. Norton & Company, 1986), 9.
58. To illustrate, we might contrast two British MPs speaking out against Northern Ireland's abortion laws through reference to their own abortions. Conservative MP Heidi Allen's account fits the mould of the 'right' kind of narrative when she reports that her abortion was an 'incredibly hard decision' and explains she had been very ill with daily seizures and so reluctantly put her health first: <https://www.independent.co.uk/news/uk/politics/northern-ireland-abortion-irish-referendum-rules-pro-choice-life-pregnancy-mps-a8384976.html>. Labour MP Jess Phillips takes a bigger political risk in writing that 'my abortion was nothing special. I cannot remember the date it happened. I never wonder': <https://www.theguardian.com/commentisfree/2018/may/27/jess-phillips-i-had-an-abortion-and-will-fight-for-rights-for-everyone>
59. Millar, *Happy Abortions*, 2 (quoting Katha Pollitt).
60. Ross and Solinger, *Reproductive Justice*, 102.
61. Millar, *Happy Abortions*, 501.
62. Ibid., 508.
63. Ibid., 507, quoting Selena Ewing, *Women and Abortion: An Evidence-Based Review* (Parramatta: Women's Forum Australia, 2005).
64. Berlant, 'America, "Fat", the Fetus', 147.
65. Pam Lowe, *Reproductive Health and Maternal Sacrifice: Women, Choice and Responsibility* (Palgrave Macmillan, 2016), 109.
66. Jonathan Watts, 'El Salvador', <https://www.theguardian.com/global-development/2015/dec/17/el-salvador-anti-abortion-law-premature-birth-miscarriage-attempted-murder>
67. Millar, 'Mourned Choices', 506.
68. Ross and Solinger, *Reproductive Justice*, 122.
69. See Victoria Browne, "'The money follows the mum": Maternal Power as Consumer Power', *Radical Philosophy* 199 (2016), 2–7.
70. Millar, *Happy Abortions*, 508.
71. Penelope Deutscher, *Foucault's Futures: A Critique of Reproductive Reason* (New York: Columbia University Press, 2016).
72. One estimate is that uninsured women in the US are paying between \$4,000 and \$9,000 for medical treatment of miscarriage, whilst insured women are paying out-of-pocket expenses of between \$250 and \$1,200, depending upon their co-payments and deductibles. See Jessica Grose, 'The Cost of a Miscarriage', *The Slate*, 26 March 2015, http://www.slate.com/articles/double_x/doublex/2015/03/the_cost_of_a_miscarriage_we_talk_about_the_emotional_pain_but_not_the_financial.html.
73. See Oparah et al, *Battling Over Birth*. Briggs also cites a large study finding that after controlling for confounders, the rate of miscarriage for Black or African American women was 57% higher overall and 93% higher after week 10 of pregnancy, and another which shows that the mortality rate for Black infants is more than twice that for white infants. Briggs also notes that infant mortality rates are elevated for Native Americans, Asian Americans and Latinx people, particularly Puerto Ricans, but she explains that this data set has greater variation because of the different health experiences of the different groups, which have not been made into coherent groups the way African Americans have. See *Reproductive Politics*, 129–34. Another devastating reality is that, according to the Centre for Disease Control and Prevention, Black women in the US die from pregnancy- or childbirth-related causes at three to four times the rate of white women.
74. To be clear: the 'DIY abortion' is not necessarily risky in itself, as argued by feminist campaigns to de-medicalise abortion or to legalise taking abortion pills in a home setting. See, for example, Lizzie Presser, 'Inside the secret network providing home abortions across the US', *The Guardian*, 27 August 2018, <https://www.theguardian.com/world/2018/aug/27/inside-the-secret-network-providing-home-abortions-across-the-us>. Or Claudia Craig, 'It's perfectly safe – so why can't women take abortion pills at home?', *The Guardian*, 1 August 2018, <https://www.theguardian.com/commentisfree/2018/aug/01/abortion-pill-law-scotland-women-english>.
75. Berlant, 'America, "Fat", the Fetus', 149.
76. 'Doula' is a term for birth attendant, though 'full-spectrum' doulas offer support for the full range of pregnancy outcomes including abortion, miscarriage and stillbirth.
77. Loretta Ross, 'Preface' to Mary Mahoney and Lauren Mitchell, *The Doulas: Radical Care for Pregnant People* (New York: Feminist Press at the City University of New York, 2016), x.
78. Mahoney and Mitchell, *The Doulas*, 5.
79. Lynn Paltrow, 'Abortion Issue Divides, Distracts Us From Common Threats and Threads', *Perspectives* 13:3 (2005), available at https://www.americanbar.org/content/dam/aba/publishing/perspectives_magazine/women_perspectives_voicesabortion.pdf.
80. Scuro, *Pregnancy [does-not-equal] Childbearing*, xiii.
81. Lynn Paltrow, 'Abortion Issue Divides'; Scuro, *Pregnancy [does-not-equal] Childbearing*, xiii–iv; see also Mahoney and Mitchell, 10.
82. Reiheld, "'The Event That Was Nothing'", 22.
83. Millar, *Happy Abortions*, 2.